IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1452 of 1984

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNADAS THAKURDAS HARIRAMANI - Appellant(s)
Versus
MIRCHUMAL KHANCHAND - Defendant(s)

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Appearance :
MISS KALPANA R SHAH for Appellant(s) : 1,
MR RF PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2006

ORAL JUDGMENT

1. Present appeal has been filed by the appellant herein – original plaintiff (hereinafter referred to as “the plaintiff”) challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 6th July, 1987 passed in Civil Suit No.2555 of 1979 in

dismissing the said suit.

2. The plaintiff filed Civil Suit No.2555 of 1979 in the City Civil Court, Ahmedabad, claiming in all of Rs.21,375/- i.e. Rs.14,000/- as principal amount and Rs.7350/-as interest due and Rs.25/- as notice charges. It was averred in the plaint that the plaintiff has friendly relations with the defendant and the defendant was doing the business of Hosiery and ready made cloth goods in the name and style of M/s. Kamlesh Ready Made and Hosiery Centre. It was further averred in the plaint that the defendant had taken an amount of Rs.14,000/- from the plaintiff on 29th August, 1976 and on 15th September, 1976 respectively for his personal use for expansion of his business as friendly loan. It was further averred that at the relevant time he executed promissory notes duly signed by him over revenue stamps in favour of the plaintiff promising to pay the amount on demand. It was further averred that while executing the promissory note, he had also issued post dated cheques in favour of the

plaintiff in all 10 cheques amounting to Rs.14,000/-. It was further averred that the aforesaid cheques issued by the defendant were presented in the bank of the defendant for encashment and realization of the amount by the plaintiff but the same were subsequently returned as dis-honoured. It was averred that inspite of repeated demands, the aforesaid amount was not paid and therefore, the aforesaid suit came to be filed.

3. The suit was resisted by the defendant by filing written statement at Exh.27. It was submitted that the suit is time barred and the suit filed on the alleged promissory notes is not tenable in law since the suit promissory notes are insufficiently and improperly stamped. It was also contended that even the dates on the promissory notes were altered with a mala-fide of bringing the suit within time. It was further contended that the so-called promissory note for Rs.6000/- does not bear the signature of the defendant and was never executed by him and that

the suit was barred under the provisions of the Bombay Money Lenders Act. It was specifically denied to have taken loan of Rs.14,000/-. It was also further contended that in fact, more amount has been recovered by the plaintiff.

4. The learned trial Court raised the issues at Exh.36. The learned trial Court held that as the writings at Exhs.44/1, 44/2 and 44/3 i.e. the promissory notes were insufficiently stamped and therefore, they were inadmissible in evidence for any purpose and they cannot be acted upon and accordingly, the learned trial Court answered the issue No.1 in affirmative.

5. The plaintiff himself was examined at Exh.47. Considering the documentary as well as oral evidence and considering the finding that the alleged promissory notes were inadmissible in evidence, the learned trial Court held that the plaintiff has failed to prove that he gave loan of Rs.14,000/- to the defendant on 29th August, 1976 and on 15th September, 1976 and accordingly,

the learned trial Court dismissed the suit.

6. The learned advocate appearing on behalf of the parties are absent when this appeal was called out for hearing twice today. On considering the Records & Proceedings and the deposition of the plaintiff and other documentary evidence, more particularly, considering the fact that the alleged promissory notes were insufficiently stamped, they are rightly held to be inadmissible in evidence for any purpose and therefore, the learned trial Court has rightly dismissed the suit. On going through the evidence and deposition from the record and considering the discussion of the learned trial Court, this Court is in complete agreement with the reasoning and findings of the learned trial Court. Considering the fact that the promissory notes were inadmissible in evidence, the learned trial Court has rightly dismissed the suit.

7. For the reasons stated above, the appeal fails and is accordingly dismissed. However, there

shall be no order as to costs.

[M.R.SHAH, J.]

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